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FEDERAL COMMUNICATIONS COMMISSION  
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FEDERAL COMMUNICATIONS COMMISSION  
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In The Matter of

IMPLEMENTATION OF THE  
TELECOMMUNICATIONS ACT OF 1996:

TELECOMMUNICATIONS CARRIERS'  
USE OF CUSTOMER PROPRIETARY  
NETWORK AND OTHER CUSTOMER  
INFORMATION

CC Docket No. 96-115

COMMENTS OF THE  
TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS  
RESELLERS ASSOCIATION

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## **SUMMARY**

The Telecommunications Resellers Association ("TRA"), an organization consisting of more than 450 resale carriers and their underlying product and service suppliers, offers the following comments in the captioned rulemaking proceeding:

- TRA urges the Commission in the strongest possible terms to take this opportunity to address the obligations imposed on telecommunications carriers by new Sections 222(a) and 222(b) of the Communications Act of 1934, as amended by the '96 Act, and to promulgate such regulations as are necessary to ensure that the safeguards embodied therein are effective.
- Sections 222(a) and 222(b) contain the prohibition long sought by resale carriers against abuse by network providers of the competitively-sensitive data resale carriers are compelled to disclose in order to obtain network services.
- TRA offers the following five recommendations as to actions that the Commission could and should take in this proceeding to put "teeth" into the Sections 222(a) and 222(b) mandates:
  - The Commission should issue a strong, unequivocal and unambiguous policy statement declaring that it is unlawful for network providers to use information disclosed to them by their resale carrier customers for any purpose other than to provide the telecommunications and other (e.g., billing) services for which the resale carrier customers have contracted.
  - The Commission should impose on network providers the duty to safeguard against unauthorized disclosure and abuse by their marketing personnel of the competitively-sensitive data of their resale carrier customers. Certain threshold requirements are appropriate in this respect. First, network providers should be required to deny all marketing personnel access to the confidential data of their resale carrier customers. Second, a corporate officer of each network provider should be required to formally certify on a periodic basis that the proprietary data of resale carriers cannot be accessed by marketing personnel. Third, network providers should be required to detail in publicly available filings with the Commission the steps they have taken to render the confidential information of resale carriers inaccessible by marketing personnel.
  - The Commission should impose upon network providers a "strict liability" standard for breaches of their obligations under Sections 222(a) and 222(b). It is the network providers that will be making the determinations

as to the adequacy of their database safeguards and realizing the benefits of any cost or administrative savings from use of lesser measures. It is also the network providers that will realize the benefits from illicit marketing successes by their marketing personnel. It is, therefore, the network providers that should bear the liability burden for any failure of their systems.

- The Commission should make clear that network providers are not permitted to do indirectly that which Sections 222(a) and 222(b) prohibit them from doing directly. Specifically, the Commission should declare unlawful the "laundering" of the confidential data of resale carriers through other carriers, particularly LECs.
- The Commission should rigorously enforce the Section 202(a) and 202(b) mandates by imposing heavy monetary sanctions on network providers for all violations of those requirements.

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**COMMENTS OF THE  
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.1415, hereby submits its Comments in response to the Notice of Proposed Rulemaking, FCC 96-221, released by the Commission in the captioned docket on May 17, 1996 (the "Notice"). In this proceeding, the Commission will implement the mandate of Section 702 of the Telecommunications Act of 1996 ("96 Act") to safeguard the privacy of customer information.<sup>1</sup> To this end, the Notice proposes to "interpret and specify in more detail a telecommunications carrier's obligations under subsections 222(c)-(f) of the 1996 Act," establishing in so doing a "regulatory regime that balances consumer privacy and competitive considerations."<sup>2</sup>

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<sup>1</sup> Pub. L. No. 104-104, 110 Stat. 56, § 702 (1996).

<sup>2</sup> Notice, FCC 96-221 at ¶ 2.

While it applauds the Agency's efforts in this regard, TRA urges the Commission in the strongest possible terms to take this opportunity to also address the obligations imposed on telecommunications carriers by new Sections 222(a) and 222(b) of the Communications Act of 1934, as amended by the '96 Act ("34 Act"),<sup>3</sup> and to promulgate such regulations as are necessary to ensure that the safeguards embodied therein are effective. Sections 222(a) and 222(b) contain the prohibition long sought by resale carriers against abuse by network providers of the competitively-sensitive data resale carriers are compelled to disclose in order to obtain network services. The resale carrier community has always taken the position that an underlying carrier that obtains information regarding the subscribers of a resale carrier solely by virtue of its carrier/customer relationships with the resale carrier and utilizes such proprietary data to market its services to those subscribers not only violates its common carrier obligations, but is guilty of theft. Now, for the first time, there exists an express statutory prohibition of such conduct. If, however, this prohibition is to have its intended effect, it is imperative that the Commission adopt tough implementing regulations.

## **I.**

### **INTRODUCTION**

TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect the interests of entities engaged in the resale of telecommunications services. TRA's more than 450 members are all engaged in the resale of interexchange, international, local exchange, wireless

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<sup>3</sup> 47 U.S.C. §§ 222(a), 222(b).

and/or other services and/or in the provision of products and services associated with such resale. Employing the transmission, and often the switching and other, capabilities of underlying facilities-based carriers, TRA's resale carrier members create "virtual networks" to serve generally small and mid-sized commercial, as well as residential, customers, providing such entities and individuals with access to rates otherwise available only to much larger users. TRA's resale carrier members also offer small and mid-sized commercial customers enhanced, value-added products and services, including a variety of sophisticated billing options, as well as personalized customer support functions, that are generally reserved for large-volume corporate users.

While TRA's resale carrier members range from emerging, high-growth companies to well-established, publicly-traded corporations, the bulk of these entities are not yet a decade old. Nonetheless, TRA's resale carrier members collectively serve millions of residential and commercial customers and generate annual revenues in the billions of dollars. The emergence and dramatic growth of TRA's resale carrier members over the past five to ten years have produced thousands of new jobs and new commercial opportunities. In addition, TRA's resale carrier members have facilitated the growth and development of second- and third-tier facilities-based interexchange carriers by providing an extended, indirect marketing arm for their services, thereby further promoting economic growth and development. And perhaps most critically, by providing cost-effective, high quality telecommunications services to the small business community, TRA's resale carrier members have helped other small and mid-sized companies expand their businesses and generate new employment opportunities.

TRA's primary interest in this proceeding is in ensuring that the safeguards embodied in new Sections 222(a) and 222(b) of the '34 Act are effective in protecting from abuse by network providers the confidential, competitively-sensitive data its resale carrier members

must disclose to their underlying carriers in order to obtain network services. As TRA has stated on a number of occasions in comments filed with the Commission, the relationship between resale carriers and their network providers is an awkward one at best. On the one hand, resale carriers are very large customers, representing substantial sources of revenues for their underlying carriers.<sup>4</sup> Resale carriers are also, however, aggressive competitors that utilize whatever "price breaks" they secure from their network providers as a result of their substantial traffic volumes to compete for the small and mid-sized accounts that would otherwise provide these underlying carriers with their highest "margins."

As a result, network providers tend to be somewhat schizophrenic in their dealings with their resale carrier customers, treating them in some instances with the solicitude that they show large corporate accounts and on other occasions attacking them as they would any other competitor. Resale carrier customers, however, are not like other rival providers; they are dependent on their network providers for service and hence are very vulnerable to anticompetitive abuses perpetrated by such entities. An underlying carrier can devastate a resale carrier customer's business, for example, by not provisioning its service orders in a timely manner or by providing it with incomplete or inaccurate billing tapes. Of direct consequence here, a resale carrier's network provider can also inflict severe damage on its business by abusing competitively-sensitive information received from the resale carrier.

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<sup>4</sup> Competition in the Interstate, Interexchange Marketplace, 6 FCC Rcd. 5880, ¶ 115 (1991) ("First Interexchange Competition Order"), 6 FCC Rcd. 7255 (1991), 6 FCC Rcd. 7569 (1991), 7 FCC Rcd. 2677 (1992), *recon.* 8 FCC Rcd. 2659 (1993), 8 FCC Rcd. 3668 (1993) ("Second Interexchange Competition Order"), 8 FCC Rcd. 5046 (1993), *recon.* 10 FCC Rcd 4562 (1995) ("1995 Interexchange Reconsideration Order") (collectively, the "Interexchange Competition" proceeding).



In order to obtain network services, a resale carrier must disclose to a generally far larger, better established competitor its most valuable competitive information -- *i.e.*, its subscriber list. While most competitors jealously guard the identity of their customers, treating such information as trade secrets, a resale carrier must not only voluntarily disclose to its network provider the names, addresses, service locations and contact points of all its subscribers, but must position that same underlying carrier so that it can readily ascertain the precise telecommunications requirements of the resale carrier's subscribers. And given that a network provider knows the exact cost of service it is charging its resale carrier customers, it can generally determine the rates any given resale carrier customer is charging its own subscribers. In other words, a resale carrier must provide its underlying carrier with all the information that that entity requires to very effectively raid the resale carrier's subscriber base.

Unfortunately, this is not a theoretical concern for resale carriers. In responding to a survey distributed by TRA to its resale carrier members in 1994, a large percentage of respondents reported that their underlying carriers had solicited their subscribers using confidential information they had disclosed in order to obtain network services.<sup>5</sup> Nearly 90 percent of those respondents using AT&T Corp. ("AT&T") as their network provider reported such abuses. More than 50 percent of those respondents identifying Sprint Corp. ("Sprint") as their underlying carrier and roughly a third of those respondents identifying WorldCom, Inc. d/b/a LDDS/WorldCom ("WorldCom") as their network provider registered similar complaints.<sup>6</sup>

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<sup>5</sup> See Comments of the Telecommunications Resellers Association in Opposition to the "Motion for Reclassification of American Telephone and Telegraph Company as a Nondominant Carrier" filed June 9, 1995 at Appx. 2.

<sup>6</sup> The percentages of respondents identifying MCI Telecommunications Corp. ("MCI") and WilTel as their network providers who reported such abuses were substantially smaller.

Among AT&T resale carrier customers, over 60 percent characterized instances of such abuse of competitively-sensitive information as "very frequent" or "frequent" and nearly 90 percent identified the problem as "very serious" or "serious." And as more and more carriers enter the local exchange and wireless markets through resale and must deal with monopoly and duopoly providers, the problem will only get worse and worse.

As noted above, resale carriers in the past were left to argue that appropriation by network providers of confidential data disclosed to them by resale carrier customers constituted an abuse of common law common carrier obligations. There was no express prohibition barring a network provider from using information about a resale carrier customer's subscribers obtained through the customer/carrier relationship with the resale carrier to market its services to those subscribers. The customer proprietary network information ("CPNI") safeguards established by the Commission in its Computer II and Computer III Decisions were designed primarily to protect the privacy of end user customers and to safeguard rival enhanced service providers ("ESPs") and competing suppliers of customer premises equipment ("CPE") from discrimination by AT&T, the Regional Bell Operating Companies ("RBOCs") and GTE Corporation ("GTE").<sup>7</sup>

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<sup>7</sup> See, e.g., Amendment of Sections 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 F.C.C.2d 384 (1980), *recon.* 84 F.C.C.2d 50 (1980), *further recon.* 88 F.C.C.2d 512 (1981), *aff'd sub nom. Computer and Communications Industry Association v. FCC*, 693 F.2d 198 (D.C.Cir. 1984), *cert denied sub nom. Louisiana Public Service Commission v. FCC*, 461 U.S. 938 (1983), *further recon.* FCC 84-190 (released May 4, 1984) (collectively, the "Computer II Decisions"); Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Phase I, 104 F.C.C.2d 958 (1986), *recon.* 2 FCC Rcd. 3035 (1987), *further recon.* 3 FCC Rcd. 1135 (1988), *second further recon.* 4 FCC Rcd. 5927 (1989) *vacated*, California v. FCC, 905 F.2d 1217 (9th Cir. 1990), Phase II, 2 FCC Rcd. 3072 (1987), *recon.* 3 FCC Rcd. 1150 (1988), *further recon.* 4 FCC Rcd. 5927 (1989), *vacated* California v. FCC, 905 F.2d 1217 (9th Cir. 1990), Computer III Remand Proceeding, 5 FCC Rcd. 7719 (1990), *recon.* 7 FCC Rcd. 909 (1992), *aff'd* California v. FCC, 4 F.3d 1505 (9th Cir. 1993), Computer III Remand Proceeding: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards, 6 FCC Rcd. 7571 (1991), *vacated in part and remanded* California v. FCC, 39 F.3d 919 (9th Cir. 1994), *cert. denied* 115 S.Ct. 1427 (1995) (collectively, the "Computer III Decisions").

These safeguards limited the ability of carriers to use CPNI obtained through provision of regulated services to their own customers in order to gain an anticompetitive advantage in the unregulated CPE and enhanced services market.<sup>8</sup>

Applying these rules to abuses by a network provider of its resale carrier customers' confidential data is akin to forcing a square peg into a round hole. The network provider and the resale carrier customer are engaged in providing the same regulated services. Moreover, the "customer" whose information is being misused is the resale carrier, not the end user; indeed, the network provider has no relationship whatsoever with the end user. And the overriding concern is not preventing the regulated side of the carrier operation from sharing information with the unregulated side, rather the focus is on preventing such information sharing within the regulated operation between operational and marketing personnel.

The '96 Act has changed all of this, adopting explicit safeguards for the competitively-sensitive data resale carriers must disclose to their network providers. Half the battle has thus been won. The remaining portion of the fight, however, is no less important. A statutory prohibition is meaningless unless it is enforceable and enforced. TRA urges the Commission to take this opportunity to put "teeth" into Sections 222(a) and 222(b), thereby realizing the Congressional intent that network providers should not be allowed to exploit their carrier/customer relationship with their resale carrier customers by abusing confidential data disclosed in furtherance of that relationship to appropriate the resale carrier customer's subscribers. In so urging, TRA is not attempting to limit competition; rather it is endeavoring

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<sup>8</sup> Notice, FCC 96-221 at ¶ 4.

to ensure that competition is fair and equitable and that no competitor is afforded an anticompetitive advantage.

## II

### ARGUMENT

**A. The Commission Should Ensure That The Safeguards  
New Sections 222(a) And 222(b) Of The '34 Act Afford  
The Confidential Data Of Resale Carriers Are Enforceable  
And Enforced**

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As noted above, new Sections 222(a) and 222(b) of the '34 Act contain the express safeguards long sought by resale carriers against abuse of the competitively-sensitive data they must disclose to network providers in order to obtain network services. Section 222(a) imposes on all telecommunications carriers, including interexchange carriers ("IXCs"), local exchange carriers ("LECs"), competitive access providers ("CAPs"), competitive local exchange carriers ("CLECs"), wireless providers and, for that matter, resale carriers, the duty to protect the confidentiality of proprietary information of, and relating to, not only other telecommunications carriers, but telecommunications carriers reselling telecommunications services provided by the telecommunications carrier.<sup>9</sup> Section 222(b) enhances this obligation by prohibiting the use by a telecommunications carrier in its own marketing efforts of proprietary information it receives or obtains from another carrier for purposes of providing a telecommunications service; indeed, Section 222(b) mandates that such proprietary information may be used only for the purpose of providing telecommunications service to that other carrier.<sup>10</sup> In other words, Sections 222(a) and

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<sup>9</sup> 47 U.S.C. § 222(a).

<sup>10</sup> 47 U.S.C. § 222(b).

222(b) together bar a network provider from using for its own benefit the confidential information disclosed to it by a resale carrier customer, essentially reaffirming and codifying the age old common law common carrier obligation.

The duties and obligations set forth in new Sections 222(a) and 222(b) of the '34 Act are remarkably clear and direct. It is undoubtedly for this reason that the Notice does not propose "regulations that interpret and specify in more detail a telecommunications carrier's obligations" under these provisions, as it does with respect to "subsections 222(c)-(f)."<sup>11</sup> TRA does not disagree that little, if any, "interpretation" of Sections 222(a) and 222(b) is required. TRA strongly holds, however, that if Sections 222(a) and 222(b) are to have their intended effect, promulgation of implementing regulations is essential. As described above, resale carriers have watched network providers abuse their confidential information for far too long to hope that a statutory pronouncement, in and of itself, will have a dramatic impact. TRA, accordingly, offers the following five recommendations as to actions that the Commission could and should take in this proceeding to put "teeth" into the Sections 222(a) and 222(b) mandates:

**Recommendation No. 1:** The Commission should issue a strong, unequivocal and unambiguous policy statement declaring that it is unlawful for network providers to use information disclosed to them by resale carrier customers for any purpose other than to provide the telecommunications and other (*e.g.*, billing) services for which the resale carrier customers have contracted. The Commission should strongly emphasize in particular that a network provider that appropriates the confidential information of a resale carrier customer to market its services to the resale carrier's subscribers is acting in direct contravention of the '34 Act, as well

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<sup>11</sup> Notice, FCC 96-221 at ¶ 2.

as Commission policies, rules and regulations. While seemingly redundant, such a forceful policy statement is necessary to confirm for carriers that provide network services to resale carriers that the confidential data of their resale carrier customers is sacrosanct.

**Recommendation No. 2:** The Commission should impose on network providers the duty to safeguard against unauthorized disclosure and abuse by their marketing personnel of the competitively-sensitive data of their resale carrier customers. The Commission has already tentatively concluded that under new Sections 222(c), (d), (e) and (f) "all telecommunications carriers must establish effective safeguards to protect against unauthorized access to CPNI by their employees or agents, or by unaffiliated third parties."<sup>12</sup> This tentative conclusion applies with even greater force when it comes to protecting the proprietary data of resale carriers from abuse by network providers. As discussed above, the confidential information of a resale carrier customer must be shielded from marketing personnel working within the network provider's regulated operation and selling the same services offered by the resale carrier, as well as from personnel involved with other regulated and unregulated services. For example, the confidential information of a resale carrier reselling a network provider's interexchange services must be sealed off from the network provider's marketing personnel involved in selling those same interexchange services.

TRA does not necessarily disagree with the Notice's tentative conclusion that the Commission should not specify precise safeguards against unauthorized access to the competitively-sensitive data of resale carrier customers.<sup>13</sup> Certain threshold requirements are

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<sup>12</sup> Id., at ¶ 35.

<sup>13</sup> Id., at ¶ 36.

appropriate, however. First, network providers should be required to deny all marketing personnel access to the confidential data of their resale carrier customers; all databases containing such information, accordingly, must be restricted in some fashion. Second, a corporate officer of each network provider should be required to formally certify on a periodic basis that the proprietary data of resale carriers cannot be accessed by marketing personnel. Third, network providers should be required to detail in publicly available filings with the Commission the steps they have taken to render the confidential information of resale carriers inaccessible by marketing personnel.

**Recommendation No. 3:** The Commission should impose upon network providers a "strict liability" standard for breaches of their obligations under Sections 222(a) and 222(b). While the requirements set forth in Recommendation No. 2, above, are each critically important to achieving the Congressional intent embodied in Sections 222(a) and 222(b), the incentives of marketing personnel to violate the obligations imposed thereby are simply too strong to expect that all measures necessary to prevent such violations will be taken by network providers. The AT&T databases containing the competitively-sensitive data of its resale carrier customers, for example, were purportedly inaccessible when abuse of that information by AT&T marketing personnel was most rampant. TRA, accordingly, suggests that the Commission hold network providers strictly liability for any violation of the Sections 222(a) and 222(b) mandates by their marketing personnel.

It is the network providers that will be making the determinations as to the adequacy of their database safeguards and realizing the benefits of any cost or administrative savings from use of lesser measures. It is also the network providers that will realize the benefits from illicit marketing successes by their marketing personnel. TRA submits that it is, therefore,

the network providers that should bear the liability burden for any failure of their systems. Resale carriers have no say in the internal database controls or personnel policies of their network providers, yet in the absence of a strict liability standard, it is the resale carriers that would bear the brunt of abuses of their proprietary data by the marketing personnel of their network providers. Certainly, it is not an adequate answer to suggest that this problem be left to market forces; the Commission after all has an obligation to enforce the provisions of the '34 Act, including the requirement that network providers not abuse the confidential data of their resale carrier customers.

**Recommendation No. 4:** The Commission should make clear that network providers are not permitted to do indirectly that which Sections 222(a) and 222(b) prohibit them from doing directly. Specifically, the Commission should declare unlawful the "laundering" of the confidential data of resale carriers through other carriers, particularly LECs. Certain IXC's take information which has been provided to LECs during the provisioning process and returned thereafter and use it to identify customers of resale carriers by employing a process of elimination predicated upon the knowledge that customers which are not theirs belong to resale carriers. It is claimed that because the information returned by the LEC comes from an outside source, it can be lawfully utilized to identify marketing prospects even though the only reason such an analysis is possible is because the carrier is acting as the network provider of its resale carrier customers. Obviously, such an approach elevates form over substance and should not be tolerated.

**Recommendation No. 5:** The Commission should rigorously enforce the Section 202(a) and 202(b) mandates by imposing heavy monetary sanctions on network providers for all violations of those requirements. It belabors the obvious to suggest that it is extremely difficult



to document abuses of the confidential data of resale carriers by network providers. Hence, each documented violation likely represents many more undocumented violations. Network providers benefit directly from each such violation; conversely, resale carriers are harmed by each such violation. Unless there is a legitimate fear of sanctions, there will be little, if any, disincentive for conduct contrary to the dictates of Sections 222(a) and 222(b), particularly given that few, if any, violations will actually be uncovered and if discovered will be adequately documented. TRA, accordingly, submits that when abuses are proven, sanctions must be applied with speed and with force for there to be any impact on the behavior of network providers.

Adoption of the above five recommendations will go a long way towards realizing the will of Congress reflected in the specific references made to resale carriers in Sections 202(a) and 202(b). Certainly, the Congress has made it clear that new Section 222 is intended to address "competitive . . . interests with respect to CPNI" as well as consumer privacy interests.<sup>14</sup> Moreover, implementation of Sections 202(a) and 202(b) as proposed by TRA herein will facilitate the paramount Congressional objective of ensuring fair and equitable competition in all telecommunications markets.<sup>15</sup>

**B. TRA Generally Endorses The Commission's Interpretation  
And Proposed Implementation Of The Obligations Imposed  
By Sections 222(c), (d), (e), And (f) On Telecommunications  
Carriers With Respect To Use Of CPNI**

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New Sections 222(c), (d), (e) and (f) of the '34 Act establish requirements governing the treatment of CPNI by telecommunications carriers, detailing when the

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<sup>14</sup> Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2nd Sess., p. 205 (1996) ("Joint Explanatory Statement").

<sup>15</sup> *Id.* at p. 1.

confidentiality of such information must be maintained and when it may be disclosed and to whom.<sup>16</sup> Under Sections 222(c), (d), (e) and (f), customers essentially control who may have access to their CPNI and when. Unless otherwise instructed by the customer, a telecommunications carrier may use that customer's CPNI only in the provision to the customer of the telecommunications service from which the information was derived, as well as certain associated services. Other exceptions to the nondisclosure requirement include aggregation of a customer's CPNI with the CPNI of other customers prior to its disclosure and use by the carrier of a customer's CPNI in billing and collection activities, to protect against fraudulent, abusive or unlawful use of the carrier's services and in association with calls initiated to the carrier by the customer. Section 222(e) also imposes on local telecommunications providers the obligation to provide subscriber list information for directory publishing purposes.

As noted earlier, the Commission, consistent with the directive of the Joint Explanatory Statement,<sup>17</sup> seeks to balance consumer privacy and competitive considerations in establishing a regulatory regime under Sections 222(c), (d), (e) and (f).<sup>18</sup> With a few limited exceptions, TRA supports the Commission's efforts in this regard. At the outset, however, it is important to differentiate among "customers" in applying the Sections 222(c), (d), (e) and (f) CPNI requirements. The "customer" is the individual or entity with whom the telecommunications carrier has a direct relationship and who is responsible for payment of the carrier's charges and for compliance with its tariff requirements. Ordinarily, the customer is an

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<sup>16</sup> 47 U.S.C. § 222(e), (d), (e), (f).

<sup>17</sup> Joint Explanatory Statement at p. 205.

<sup>18</sup> Notice, FCC 96-221 at ¶ 2.

end user, but when a resale carrier is involved, the resale carrier is the "customer" of its network provider, while the end users are the customers of the resale carrier. Thus, only the resale carrier can instruct the network provider regarding the disposition of the CPNI of its customers; the resale carrier, of course, is in turn bound by the directives of its end user customers regarding the disposition of this data.

With this clarification, TRA agrees with the Commission that the Congress did not intend for the reference in Section 222(c)(1) to "the telecommunications service from which such information was derived" to encompass all basic services, thereby authorizing carriers to use the CPNI of a customer derived from one basic service to market all other basic services. Such an interpretation would effectively negate the "consumer privacy interests" the Congress sought to protect in Section 222.<sup>19</sup> TRA endorses the Commission's tentative conclusion that Congress intended to distinguish among telecommunications services "based on traditional distinctions."<sup>20</sup> TRA agrees with the Commission that local, interexchange and commercial mobile radio services ("CMRS") are appropriate categories, but disagrees with the Agency that intraLATA or "short-haul toll" should be treated as both a local and an interexchange telecommunications service.<sup>21</sup> Such an approach would simply perpetuate a vestige of the monopoly local exchange structure that the '96 Act has struck down.<sup>22</sup> Overall, however, the Commission's interpretation accomplishes the important objective of "prohibit[ing] carriers that are established providers of

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<sup>19</sup> Joint Explanatory Statement at p. 205.

<sup>20</sup> Notice, FCC 96-221 at ¶ 22.

<sup>21</sup> Id.

<sup>22</sup> 47 U.S.C. §§ 253.

certain telecommunications services from gaining an advantage using CPNI to facilitate their entry into new telecommunications services without obtaining prior customer authorizations."<sup>23</sup>

TRA also agrees with the Commission's approach to customer notification and authorization requirements as they apply to CPNI. The Commission is correct that "customers must know that they can restrict access to the CPNI obtained from their use of a telecommunications service before they waive that right, in order to be considered to have given approval."<sup>24</sup> Consistent with this view, TRA agrees with the Commission that telecommunications carriers seeking approval for CPNI use from customers should be required to notify those customers of their rights to restrict access to their CPNI.<sup>25</sup> In TRA's view, such notification could be oral and delivered simultaneously with the request for approval of the CPNI use so long as the oral notification was accurate and complete and delivered to an appropriate representative of the customer. The actual authorization should, however, be in writing to protect both the customer, the carrier and the process. Reliance upon oral approvals is, in TRA's view, an invitation for both controversy and anticompetitive manipulation of the process. If, however, oral approvals are recognized, carriers should be required to tape such conversations, including the carrier request for authorization and all associated explanations of consumer rights and alternatives, and maintain such tapes for purposes of regulatory compliance audits. Authorizations should expire periodically, remaining effective for no more than six months at any one time.

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<sup>23</sup> Notice, FCC 96-221 at ¶ 24

<sup>24</sup> Id. at ¶ 28.

<sup>25</sup> Id.

With respect to existing Computer III CPNI requirements, TRA agrees with the Commission that these obligations should continue to apply to AT&T, the RBOCs and GTE, pending the outcome of this proceeding.<sup>26</sup> TRA disagrees, however, that these entities should be permitted to continue to use the CPNI of customers with less than 20 lines for marketing enhanced services without securing the customer's prior authorization to do so. Likewise, prior customer authorization should be required before CPNI may be used to market CPE. On its face, Section 222(c) does not appear to authorize use of CPNI for purposes of marketing enhanced services or CPE without prior customer authorization.

As to the jurisdictional issues raised by the Notice, TRA agrees with the Commission that "[t]he 1996 Act establishes a specific statutory scheme governing access to and protection of CPNI in a way that 'balance[s] both competitive and consumer privacy interests with respect to CPNI.'"<sup>27</sup> Nonetheless, TRA believes that the public interest would be served by permitting the States to impose additional (but not more relaxed) CPNI requirements.

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<sup>26</sup> Id. at ¶ 38.

<sup>27</sup> Id. at ¶ 17.

**III.**

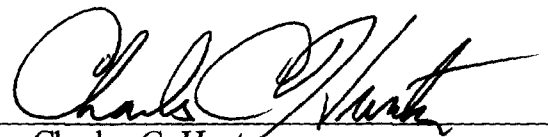
**CONCLUSION**

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to adopt rules and policies in this docket consistent with these comments.

Respectfully submitted,

**TELECOMMUNICATIONS  
RESELLERS ASSOCIATION**

By: \_\_\_\_\_



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